

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Christopher Peiffer	Confirmation No.	9849
Serial No.:	09/975,286		
Filed:	October 10, 2001	Customer No.:	72689
Examiner:	Haresh N. Patel		
Group Art Unit:	2154		
Docket No.:	1014-152US01/JNP-0489		
Title:	STRING MATCHING METHOD AND DEVICE		

RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
Alexandria, VA 22313-1450

Dear Sir:

Applicant hereby requests withdrawal of the holding of non-compliance for Applicant's Summary of the Claimed Subject Matter filed 1/7/2008, and entry of Applicant's Appeal Brief on December 10, 2007 and corrected Summary of the Claimed Subject Matter filed 1/7/2008.

Applicant filed an original Appeal Brief on November 20, 2007. On December 7, 2007, the Office issued a Notification of Non-compliant Appeal Brief with respect to Applicant's Appeal Brief filed November 20, 2007. Specifically, the Office noted that Applicant failed to summarize independent claim 24. In accordance with MPEP 1205.03 (B), Applicant submitted a corrected Summary of the Claimed Subject Matter on January 7, 2008 in lieu of an entire new brief. The corrected Summary of Claimed Subject Matter properly summarized independent claim 24. In response, the Examiner issued a Second Notification of Non-Compliant Appeal Brief on April 4, 2007 asserting the following:

"The appeal brief field [sic] dated 1/7/2008 does not contain grounds of rejection to be reviewed on appeal. Further the cited portions of the specification in the appeal brief dated 1/7/2008 do not demonstrate how a casesensitive [sic] match can be done for

unknown string (for example, "Hello" and its binary representation) with an HTTP header and how the mentioned operations are possible among them."

Applicant submits that the Examiner's erred in issuing the Second Notification of Non-Compliant Appeal Brief on April 4, 2007.

The Examiner's first reason for not entering Applicant's corrected Summary of the Claimed Subject matter was stated as: "[t]he appeal brief field [sic] dated 1/7/2008 does not contain grounds of rejection to be reviewed on appeal." Applicant respectfully points out that Applicant's communication submitted on 1/7/2008 was a corrected Summary of the Claimed Subject Matter, which need not contain a section restating the grounds of rejection to be reviewed on appeal. Specifically, the communication filed 1/7/2008 was submitted in accordance with MPEP 1205.03 (B) so as to provide a corrected Summary of the Claimed Subject Matter in lieu of an entire new brief. Specifically, MPEP 1205.03 (B) states:

(B) When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice.

Consequently, MPEP 1205.03 (B) makes clear that when an original brief is defective with respect to the summary of the claimed subject matter, Applicant is not required to resubmit other portions of the brief, such as the grounds of rejection to be reviewed. Thus, the Examiner erred as using this as a basis for finding Applicant's corrected Summary of the Claimed Subject Matter as non-compliant. Moreover, Applicant refers the Commissioner to Applicant's original Appeal Brief filed November 20, 2007, pg. 10, which properly list the Grounds of Rejection to be Reviewed on Appeal.

The Examiner's second reason for not entering Applicant's corrected Summary of the Claimed Subject matter was stated as "[f]urther, the cited portions of the specification in the appeal brief dated 1/7/2008 do not demonstrate how a casesensitive [sic] match can be done for unknown string (for example, "Hello" and its binary representation) with an HTTP header and

how the mentioned operations are possible among them.” With respect to this argument, Applicant respectfully points out that 37 CFR 41.37(c)(1) requires that an appeal brief include a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. Applicant’s corrected Summary of the Claimed Subject Matter dated 1/7/2008 provides a concise summary of each of the independent claims involved in the appeal and refers to portions of the specification and the figures to illustrate and describe each of the features recited in the claims as required by 37 CFR 41.37(c)(1). The Examiner has not addressed these requirements nor cited any elements of the claims that were not properly summarized. Instead, the Examiner appears to be advancing some new substantive position that is unrelated to the formal briefing requirements of 37 CFR 41.37(c)(1). Such an argument should be made in the Examiner’s Answer with respect to the specific grounds of rejection to be reviewed on appeal, and Applicant will address any such substantive arguments from the Examiner in a subsequent Reply Brief. Such substantive assertions by the Examiner provide no basis for not entering Applicant’s appeal brief, and essentially prevent Applicant from exercising its fundamental due process rights to an appeal. In sum, the Examiner has not identified any failure to comply with the briefing requirements of 37 CFR 41.37(c)(1); nor has the Examiner identified any elements of the independent claims that were not correctly summarized per these requirements.

In view of these comments and observations, Applicant respectfully requests that the Examiner: (1) withdraw the holding of non-compliance for Applicant’s corrected Summary of the Claimed Subject Matter filed 1/7/2008, and (2) enter Applicant’s Appeal Brief on December 10, 2007 and corrected Summary of the Claimed Subject Matter filed 1/7/2008, both of which are hereby incorporated in this response in their entirety.

Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

September 5, 2008

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